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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. SABREE MOHAMMAD TRIPLETT, Defendant and Appellant.	G038941 (Super. Ct. No. 06HF0150) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Affirmed.

Cara DeVito, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Christine Levingston Bergman and Rhonda Cartwright-Ladendorf, Deputy Attorneys General, for Plaintiff and Respondent.

FACTS

Sabree Mohammad Triplett was convicted by a jury of two assaults upon a 22-year-old woman (one count of assault with a vehicle, one of assault by force likely to cause great bodily injury) and one assault (with a vehicle) upon a peace officer. The jury was unable to agree on the forcible rape charge against him and the People dismissed it rather than retry it. A court trial was held on the prior state prison felony convictions charged against Triplett, and they were found to be true.

Before the sentencing hearing, the court received a probation report, appellant's sentencing brief, a statement from the prosecution regarding aggravation, a defense motion to strike unsubstantiated matters from the probation report, a defense response to the probation report, and a victim impact statement with a request by the victim for restitution. At the hearing, both sides were asked whether they had anything to add to the documents described above. Defense counsel and the prosecutor both said they did not. The prosecutor referred the court to the victim impact statement, after which defense counsel said, "I don't have anything further with respect to that area. Other than the letters that the court has already read and considered." Both attorneys argued the pros and cons of sentencing and the court imposed a sentence of seven years, four months imprisonment.

DISCUSSION

Triplett complains that he was not given the opportunity to "personally allocute" a sentencing argument.[1] He believes that had he personally presented his case

[1] Triplett also contends his sentence was illegal. He contends punishment for his priors denied his Sixth Amendment right to a jury as recognized in *Cunningham v. California* (2007) 549 U.S. 270 and *Blakely v. Washington* (2004) 542 U.S. 296. Specifically, he argues the California Supreme Court's decision in *People v. Sandoval* (2007) 41 Cal.4th 825 was erroneous. At the same time, appellant recognizes we are bound by the Supreme Court's decision in *Sandoval* under principles of stare decisis. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Indeed, we are constitutionally obliged to "accept the law declared by courts of superior jurisdiction"; "[i]t is not [our] function to attempt to overrule decisions of a higher court." (*Ibid*.) Therefore, we must affirm the judgment and continue to follow *Sandoval* until such time as it is abrogated or overruled. Triplett acknowledges that his contention in this regard must be rejected by us, and he makes it only for the purpose of preserving it for federal review.

to the court, he "likely would have obtained a more favorable result," and that failure to offer him this chance deprived him of his right to due process and his California statutory rights under Penal Code sections 1200 and 1204.

Triplett's argument is that had he been allowed to speak in his own behalf instead of through his attorney, he could have explained to the court the circumstances of his prior state prison commitments for narcotics violations in such convincing manner that the court would have stricken punishment for those two offenses, thereby reducing his commitment by 13.5 percent. Triplett does not explain what truly extraordinary facts he would have related to the court to bring about that result, or why those facts could not have been communicated to the court by his attorney, but those two hurdles, insurmountable as they might appear upon first glance, are not his biggest problem.

His biggest problem is that he never requested such an opportunity, and has therefore forfeited it. As our Supreme Court has repeatedly held, "no court has held that in a noncapital case a trial court must, on its own initiative, offer the defendant allocution." (*People v. Lucero* (2000) 23 Cal.4th 692, 718, italics omitted; *People* v. *Clark* (1993) 5 Cal.4th 950, 1036, 1037 [no right to allocate absent a request].)

The court revisited the issue just months ago, shortly after Triplett's opening brief was filed in this case, in *People v. Evans* (2008) 44 Cal.4th 590. There, the court described a factual context essentially indistinguishable from ours: Just before pronouncing sentence, the trial court inquired, "'With that, the matter's submitted, correct?'" Defense counsel replied, "'Submitted.' Defense counsel made no attempt to call defendant to testify, and defendant himself did not ask to do so. Under these circumstances, there was a forfeiture of defendant's right to testify in mitigation of punishment." (*Id.* at p. 600.) The court went on to say, "It was only after the trial court had denied probation and was in the process of sentencing defendant to prison that defendant asked, 'Can I speak, your honor?' Assuming for the sake of argument that this may be construed as a request to testify in mitigation of punishment, it came too late; it

should have been made before the court started to pronounce defendant's sentence." (*Ibid*.)

Here, even assuming Triplett's appellate argument constitutes an offer to testify and be cross-examined under oath – a fact not at all clear from his briefing – it comes way too late. If asking to speak for the first time while the court is pronouncing judgment is too late to avoid forfeiture, a fortiori, raising the issue in a lengthy letter to the court received six days later is too late.

The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.